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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 THAYER JOSEPH BURTON, JR.,

9 *Petitioner,*

10 vs.

11 BRIAN WILLIAMS, *et al.*,

12 *Respondents.*
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2:15-cv-02291-APG-VCF

ORDER

15 Petitioner, a Nevada prisoner, has submitted a petition for writ of habeas corpus pursuant to 28
16 U.S.C. § 2254. ECF No. 1. Petitioner has failed to file an application to proceed *in forma pauperis* or
17 pay the filing fee. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2)
18 and Local Rules LSR1-1, 1-2.

19 Thus, the present action will be dismissed without prejudice to the filing of a habeas petition
20 pursuant to 28 U.S.C. § 2254 on the form required by this court in a new action with either the \$5.00
21 filing fee or a completed application to proceed *in forma pauperis* on the proper form with both an
22 inmate account statement for the past six months and a properly executed financial certificate.

23 It does not appear from the papers presented that a dismissal without prejudice will materially
24 affect a later analysis of any timeliness issue with regard to a promptly filed new action. Petitioner at
25 all times remains responsible for properly exhausting his claims, for calculating the running of the
26 federal limitation period as applied to his case, and for properly commencing a timely-filed federal
27 habeas action.
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1 **IT IS THEREFORE ORDERED** that this action is **DISMISSED** without prejudice to the
2 filing of a petition in a new action with either the \$5.00 filing fee or a properly completed application
3 form to proceed *in forma pauperis*.

4 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as jurists of
5 reason would not find the court's dismissal of this improperly commenced action without prejudice to
6 be debatable or incorrect.

7 **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies each of an
8 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital Section 2254
9 habeas petition form, one copy of the instructions for each form, and a copy of the papers that he
10 submitted in this action.

11 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly and
12 close this case.

13 Dated: January 19, 2016.

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UNITED STATES DISTRICT JUDGE